

D164/4/8

**BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' OBSERVATIONS ON KHIEU SAMPHAN'S REQUEST
FOR RECONSIDERATION OF THE PRE-TRIAL CHAMBER'S ORDER
DATED 20 AUGUST 2009 ABOUT ORAL HEARING**

Filed by:

Distribution to:

Office of the Co-Prosecutors:

Ms. CHEA Leang
Mr. William SMITH
Mr. YET Chakriya
Mr. SENG Bunkheang
Mr. Vincent de WILDE
Mr. Anees AHMED
Mr. Tarik ABDULHAK

Pre-Trial Chamber:

Judge PRAK Kimsan, Presiding
Judge Rowan DOWNING QC
Judge NEY Thol
Judge Katinka LAHUIS
Judge HUOT Vuthy

Defence Counsel:

NUON Chea
Mr. SON Arun
Mr. Michel PESTMAN
Mr. Victor KOPPE

IENG Thirith

Mr. PHAT Pouy Seang
Ms. Diana ELLIS

KHIEU Samphan

Mr. SA Sovan
Mr. Jacques VERGES

ឯកសារបានតម្កល់ត្រឹមត្រូវតាមច្បាប់ដើម	
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OBSERVATIONS

1. On 22 September 2009, the Pre-Trial Chamber directed (“Directions”)¹ the Co-Prosecutors to respond to a request for reconsideration by Appellant KHIEU Samphan (“Request”)² of a decision of the Pre-Trial Chamber (“Decision”)³ that denied an application of oral hearing of this Appeal.⁴ The Co-Prosecutors file these observations in compliance with the Directions.
2. In its Decision, the Pre-Trial Chamber, amongst other things, had observed as follows:

“The Pre-Trial Chamber notes that, as a general rule, it would consider this particular category of appeals against the Co-Investigating Judges’ Order refusing requests for investigative actions on the basis of written submissions alone. This approach derives from the confidential nature of the investigation as provided for in Internal Rule 56. [...] The Pre-Trial Chamber, therefore, rejects the requests for a hearing.”⁵
3. The Co-Prosecutors reiterate that, in the circumstances of the current Appeal, no oral hearing is required.⁶ The issues raised are “simple and largely technical” and, as such, the Appeal can be decided on written submissions alone.⁷ The Pre-Trial Chamber, therefore, rightly dismissed the Appellant’s request for an oral public hearing.
4. The Co-Prosecutors, however, observe that the scheme of the Internal Rules does not necessarily imply that every appeal raising confidential matters should be decided on written submissions alone. A confidential oral hearing may be ordered if the Pre-Trial Chamber considers that a public hearing may prejudice the judicial investigation or endanger the safety of victims or witnesses. It does not, therefore, necessarily follow that every confidential appeal should be decided on written submissions alone.

¹ *Case of KHIEU Samphan*, Decision on the Admissibility of the Appeal Lodged by Khieu Samphan and Directions to the Co-Prosecutors, D164/4/7, 22 September 2009, para. 15 [*hereinafter* Directions].

² *Case of KHIEU Samphan*, Request to Reconsider the Decision on Request for an Oral Hearing on the Appeals PTC 24 and 25, D164/4/6, 24 August 2009 [*hereinafter* Request].

³ *Case of KHIEU Samphan*, Decision on Request for an Oral Hearing on the Appeals PTC 24 and 25, D164/4/3, 20 August 2009, p. 3 [*hereinafter* Decision].

⁴ *Case of KHIEU Samphan*, Joint Defence Appeal from the OCIJ Order on the Request for Investigative Action to Seek Exculpatory Evidence in the SMD of 19 June 2009, D164/4/1, 24 July 2009 [*hereinafter* Appeal].

⁵ Decision, para. 5.

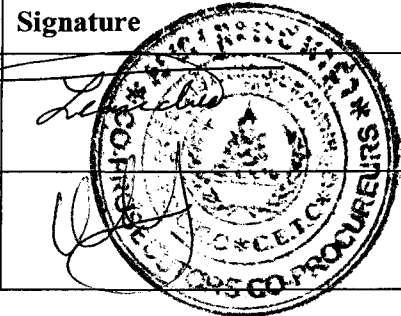
⁶ *Case of KHIEU Samphan*, Co-Prosecutors’ Combined Response to the Appeal by Ieng Thirith, Nuon Chea, Khieu Samphan and Ieng Sary Against the Co-Investigating Judges’ Order Denying a Joint Defence request for Investigative Action to Seek Exculpatory Evidence in the Shared Material Drive, D164/4/2, 10 August 2009, paras. 12-16 [*hereinafter* Appeal Response].

⁷ Decision, para. 3.

REQUEST

5. The Co-Prosecutors, accordingly, submit that the Pre-Trial Chamber deny the Request for an oral hearing in the current Appeal. It may, however, consider holding, as a matter of law, that confidential oral hearings may be held in future appeals arising out of requests for investigative actions should the situation so demand.

Respectfully submitted,

Date	Name	Place	Signature
28 Sept 2009	CHEA Leang Co-Prosecutor	Phnom Penh	
	William SMITH Co-Prosecutor	Phnom Penh	